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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,697	06/16/2000	Robert Lee Fitzsimmons JR.	VULC-004/00US	2303

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EXAMINER

YOUNG, JOHN L

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 05/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/594,697

Applicant(s)
Fitzsimmons

Examiner
John Young

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 24, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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FINAL ACTION REJECTION

DRAWINGS

1. This application has been filed with drawings that are considered informal; said drawings are acceptable for examination purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

ABSTRACT OBJECTION—37 CFR 1.72(b)

2. **Objection Withdrawn.**

PRIOR ACTION CLAIM REJECTIONS — 35 U.S.C. §103(a)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-14 are rejected under 35 U.S.C. §103(a) as being obvious over Merrill US 5,333,257 (07/26/1994) (herein referred to as “Merrill”) in view of Sehr US 6,085,976 (7/11/2000) [US f/d: 5/22/1998] (herein referred to as “Sehr”).

As per claim 1, Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) discloses the “public space”; “artifacts”; and

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“associating a unique identifier with each of the plurality of artifacts. . . .” elements and limitations of claim 1. In this case the Examiner interprets the plurality of identified seating choices as being equivalent to “associating a unique identifier with each of the plurality of artifacts. . . .”

Merrill lacks an explicit recitation of the “recording, as the visitor traverses the public space, identifiers associated with artifacts the visitor indicates as being of interest to the visitor. . . .”

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the “recording, as the visitor traverses the public space, identifiers associated with artifacts the visitor indicates as being of interest to the visitor. . . .” elements and limitations of claim 1.

Sehr proposes “recording, as the visitor traverses the public space, identifiers associated with artifacts the visitor indicates as being of interest to the visitor. . . .” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “*allows the ticket customer to see an approximation of that view for a particular event configuration. . . .*” (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided “*a portable . . . card to store, process and*

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communicate cardholder data . . . and electronic payment means. . . .” (see Sehr (Col. 3, ll. 1-4)).

As per claim 2, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill lacks an explicit recitation of the elements and limitations of claim 2.

Sehr (col. 3, ll. 1-4) shows elements that suggest the elements and limitations of claim 2.

Sehr proposes “portable selection device” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “*allows the ticket customer to see an approximation of that view for a particular event configuration. . . .*” (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided “*a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .*” (see Sehr (col. 3, ll. 1-4)).

As per claim 3, Merrill in view of Sehr shows the method of claim 2. (See the rejection of claim 2 supra).

Merrill lacks an explicit recitation of the elements and limitations of claim 3.

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Sehr (col. 41, ll. 45-50) shows elements that suggest the elements and limitations of claim 3.

Sehr proposes “profile” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “*allows the ticket customer to see an approximation of that view for a particular event configuration. . . .*” (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided “*a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .*” (see Sehr (col. 3, ll. 1-4)).

As per claim 4, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill lacks an explicit recitation of the “Internet” elements and limitations of claim 4.

Sehr (Col. 1, ll. 38-42; col. 5, ll. 1-3; col. 7, ll. 15-25; col. 17, ll. 28-32; and col. 21, ll. 25-26) shows elements that suggest the “Internet” elements and limitations of claim 4.

Sehr proposes “Internet” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the

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invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *“allows the ticket customer to see an approximation of that view for a particular event configuration. . . .”* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *“a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .”* (see Sehr (col. 3, ll. 1-4)).

As per claims 5-8, Merrill in view of Sehr shows the method of claim 1. (See the rejection of claim 1 supra).

Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) in view of Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the elements and limitations of claims 5-8.

Merrill in view of Sehr lacks an explicit recitation of the elements and limitations of claims 5-8, even though Merrill in view of Sehr suggests same.

“Official Notice” is taken that both the concepts and the advantages of the elements and limitations of claims 5-8 were well known and expected in the art by one of ordinary skill at the time of the invention because such concepts and advantages would have provided means that *“allows the ticket customer to see an approximation of that view for a particular event configuration. . . .”* (see Merrill (col. 1, ll. 31-33)) and

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because such combination would have provided “*a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . .*” (see Sehr (col. 3, ll. 1-4)).

As per claim 9, Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) discloses the “public space”; “artifacts”; and “associated with a unique identifier. . . .” elements and limitations of claim 9. In this case the Examiner interprets the plurality of identified seating choices as being equivalent to associating a unique identifier with each of the plurality of artifacts.

Merrill lacks an explicit recitation of the “receiving the recorded artifact identifiers. . . .”

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the “receiving the recorded artifact identifiers. . . .” elements and limitations of claim 9.

Sehr proposes “receiving the recorded artifact identifiers. . . .” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “*allows the ticket customer to see an approximation of that view for a particular event configuration. . . .*” (see Merrill (col. 1, ll. 31-33)) and because such combination would

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have provided “a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .” (see Sehr (Col. 3, ll. 1-4)).

Merrill lacks an explicit recitation of the “portable selection device” elements and limitations of claim 9.

Sehr (col. 3, ll. 1-4) shows elements that suggest the “portable selection device” elements and limitations of claim 9.

Sehr proposes “portable selection device” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “allows the ticket customer to see an approximation of that view for a particular event configuration. . . .” (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided “a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .” (see Sehr (col. 3, ll. 1-4)).

As per claim 10, Merrill in view of Sehr shows the method of claim 9. (See the rejection of claim 9 supra).

Merrill lacks an explicit recitation of the “portable selection device” elements and limitations of claim 10.

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Sehr (col. 3, ll. 1-4) shows elements that suggest the “portable selection device” elements and limitations of claim 10.

Sehr proposes “portable selection device” modifications that would have applied to the system of Merrill. It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that *“allows the ticket customer to see an approximation of that view for a particular event configuration. . . .”* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *“a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .”* (see Sehr (col. 3, ll. 1-4)).

As per claims 11-14, Merrill in view of Sehr shows the method of claim 9. (See the rejection of claim 9 supra).

Merrill (the ABSTRACT; FIG. 6; FIG. 15; col. 1, ll. 5-35; col. 2, ll. 1-67; col. 3, ll. 1-67; and col. 8, ll. 10-22) in view of Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the elements and limitations of claims 11-14.

Merrill in view of Sehr lacks an explicit recitation of the elements and limitations of claims 5-8, even though Merrill in view of Sehr suggests same.

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“Official Notice” is taken that both the concepts and the advantages of the elements and limitations of claims 11-14 were well known and expected in the art by one of ordinary skill at the time of the invention because such concepts and advantages would have provided means that *“allows the ticket customer to see an approximation of that view for a particular event configuration. . . .”* (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided *“a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .”* (see Sehr (col. 3, ll. 1-4)).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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RESPONSE TO ARGUMENTS

4. Applicant's arguments/request for reconsideration (paper#12, filed 02/24/2003) concerning the obviousness rejections in the prior Office Action have been considered but are not persuasive for the following reasons:

Applicant's argument/request for reconsideration (paper#12, p. 5, ll. 15-25) asserts that "The Office Action . . . states that *Merrill* lacks an explicit recitation of the 'recording, as the visitor traverses the public space, identifiers with artifacts the visitor indicates as being of interest to the visitor. . . .' The Examiner's characterization of *Merrill* fail to capture the totality of its deficiencies."

It is well settled that "Office policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. . . ." by utilizing the *Graham* three pronged test of factual inquiries for determining obviousness: (1) Determining the scope and contents of the prior art; (2) Ascertaining the differences between the prior art and the claims in issue; and (3) Resolving the level of ordinary skill in the pertinent art. (See MPEP 2141).

In this case, and taken in the context of the factual inquiries associated with *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 set forth above and the 35 USC §103(a) obviousness rejection requirements, the prior Office Action statement that "*Merrill* lacks an explicit recitation

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of the 'recording, as the visitor traverses the public space, identifiers associated with artifacts the visitor indicates as being of interest to the visitor. . . .'" does not constitute an acknowledgment by the Office, that Merrill does not teach all of the elements and limitations of claim 1; furthermore, this is neither an acknowledgment of patentability nor an acknowledgment of non-obviousness nor an acknowledgment of any total or fatal deficiency in the relied upon reference; to the contrary, when viewed in context, such recitations merely provide the grammatical transition phraseology to the factual inquires set forth in *Graham v. John Deer Co.*, 383 U.S. 1, 86 S. Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459 and to the 35 USC §103(a) Obviousness proposition that even though the Merrill reference does not explicitly recite the claimed elements and limitations, the reference does in fact suggest the claimed elements and limitations of the instant invention; and therefore, the elements and limitations of the instant invention are rendered obvious because the prior Office Action (1) presents the scope and contents of the prior art as cited in each claim rejection; (2) the prior Office Action presents the differences between the prior art and the claims in issue by reciting what the prior art shows, what the prior art suggests and what the prior art discloses as well as indicates what the prior art fails to explicitly recite; and (3) the prior Office Action resolves the level of ordinary skill in the art by showing, suggesting and/or disclosing facts of record pertaining to the level of skill as found within the cited portions of the prior art of record. In this case, the prior Office Action states that cited portions of Merrill

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shows elements that suggest the elements and limitations of the claimed invention.

Therefore, based upon the above considerations, *prima facie* obviousness is established.

Applicant's argument/request for reconsideration (paper#12, p. 6, ll. 7-23) alleges that "there is no motivation from either *Sehr* or *Merrill* to combine their disclosures in a way that suggests the invention recited in claim 1. . . . and that the combination of *Merrill* and *Sehr* is improper." This is not the case.

It is well settled that the test requires that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." (See MPEP 707.02(j)).

Also, it is well settled that in order to establish motivation to modify or combine references, "it is not necessary that a reference actually suggest changes or possible improvements which Applicant made." (See *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). In other words the rationale for motivation to modify or combine references does not have to suggest the invention as recited in the claim.

Also, it is well settled in the law that "There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.' *In re Ruffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). . . ." (See MPEP

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2143.01). Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the combined teachings of the Merrill and Sehr references in conjunction with the knowledge of one of ordinary skill in the art either teach or suggest all of the elements and limitations of the instant invention. ““The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01).

In the prior Office Action obviousness rejections, the Examiner meets the requirements of the motivation test for combining the prior art references by quoting from the references themselves cogent reasons (i.e., motivation) to combine the teachings; furthermore the Examiner identifies how the references either teach or suggest the elements of the claims of the instant invention. Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the teachings of the references combined with the knowledge of one of ordinary skill in the art either teaches or suggests all of the elements and limitations of the instant invention. Therefore, based upon the above considerations, *prima facie* obviousness is established in the prior Office Action based upon a proper showing of motivation to combine the prior art references to come up with Applicant’s invention.

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In each instance of combining references to establish obviousness, the prior Office Action presents some suggestion or motivation found in the references as well as relying on the knowledge generally available to one of ordinary skill in the art to combine the reference teaching; for example, the prior Office Action rejection of claim 1 recites in part:

Sehr (the ABSTRACT; FIG. 2; col. 1, ll. 13-42; col. 3, ll. 60-67; col. 4, ll. 33-43- col. 4, ll. 54-67; and col. 5, ll. 1-11) shows elements that suggest the “recording, as the visitor traverses the public space, identifiers associated with artifacts the visitor indicates as being of interest to the visitor. . . .” elements and limitations of claim 1.

It would have been obvious to a person of ordinary skill in the art the time of the invention to combine the teachings of Sehr with the disclosure of Merrill because such combination would have provided means that “*allows the ticket customer to see an approximation of that view for a particular event configuration. . . .*” (see Merrill (col. 1, ll. 31-33)) and because such combination would have provided “*a portable . . . card to store, process and communicate cardholder data . . . and electronic payment means. . . .*” (see Sehr (Col. 3, ll. 1-4)).

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In response to Applicant's argument/request for reconsideration (paper#12, p. 6, ll. 23-30) which "submits that dependent claims 2-8 are patentable over the prior art of record for at least their dependency from independent claim 1 and for the features that they recite. . . .", Applicant's arguments amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

As per claims 5-8 and 11-14, Applicant's argument/request for reconsideration (paper#12, p. 6, ll. 26-30; p. 7, ll. 1-8; and p. 7, ll. 14-17) asserts that "The Office Action also states that Official Notice was taken that . . . the elements and limitations of [the] claims . . . were well known and expected in the art. . . . References to 'concepts' and 'advantages' do not specifically address the particular features recited in the claims. . . . the Examiner has improperly relied on the Applicant's own teaching and combined it with speculation to fill an acknowledged gap in any combination of *Merrill* and *Sehr*." Applicant requests that the Examiner address the deficiencies in the Official Notice in the next communication from the Patent Office.

It is well settled that "Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. . . . A challenge to the taking of judicial notice must contain adequate information or argument to create on its

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face a reasonable doubt regarding the circumstances justifying the judicial notice. . . . If [A]pplicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943). **A seasonable challenge constitutes a demand for evidence made as soon as practicable during prosecution.** Thus, [A]pplicant is charged with rebutting the well known statement in the next reply after the Office action in which the well known statement was made ” (See MPEP 2144.03 Reliance on Common Knowledge in the Art or ‘Well Known’ Prior Art 8 ed., August 2001, pp. 2100-129 and 2100-130).

In this instance, Applicant’s Response (Amendment A, paper#12) fails to demand a reference in support of the Official Notice evidence cited by the Examiner in the prior Office action concerning the obviousness rejections of claims 5- 8 & 11-14. And, Applicant’s Response lacks adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the Official Notice and thereby fails to seasonably challenge the Official Notice rejections of the instant invention, because Applicant’s argument fails to explain how the prior Office Action improperly relied on the Applicant’s own teaching (i.e., improper hindsight). In response to Applicant’s argument that the examiner’s conclusion of well known facts is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based

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upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the combined teachings of the Merrill and Sehr references in conjunction with the knowledge of one of ordinary skill in the art either teach or suggest all of the elements and limitations of the instant invention. “‘The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01). Therefore, the well known Officially Noted statements concerning the obviousness rejections of the claims at issue are taken to be admitted prior art, and no further references are required to be presented by the Examiner in support of the Official Notice evidence relied upon in the obviousness rejections of the claims 5-8 & 11-14 in the prior Office Action; furthermore, because the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the teachings of

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the references combined with the knowledge of one of ordinary skill in the art either teach or suggest all of the elements and limitations of the instant invention, *prima facie* obviousness is established in the prior Office Action based upon a proper showing of motivation to combine the prior art references to come up with Applicant's invention.

Applicant's argument/request for reconsideration (paper#12, p. 7, ll. 9-26) which amount to a general allegation that claims 9 & 10-14 define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

CONCLUSION

5. Any response to this action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Any response to this action may be sent via facsimile to either:

Serial Number: 09/594,697

(Fitzsimmons)

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(703) 746-7239 or (703) 872-9314 (for formal communications EXPEDITED PROCEDURE) or
(703) 746-7239 (for formal communications marked AFTER-FINAL) or
(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

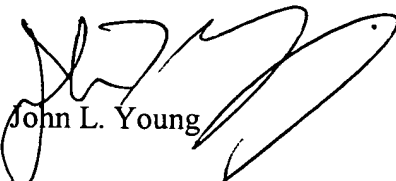
Hand delivered responses may be brought to:

Seventh floor Receptionist
Crystal Park V
2451 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.


John L. Young
Patent Examiner

May 6, 2003